

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring mining claim abandoned and void. A MC 29465.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Recordation

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

2. Administrative Procedure: Adjudication -- Evidence: Generally -- Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although, at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the

claimant's intention to abandon it and that he in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)), Congress specifically placed the burden on the claimant to show by his compliance with FLPMA's requirements that the claim has not been abandoned, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: Armin P. Kanzler, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Armin P. Kanzler appeals a decision dated January 5, 1982, of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Rainbow #5 lode mining claim, A MC 29465, abandoned and void because the claimant had failed to file with BLM by October 22, 1979, either an affidavit of assessment work performed or a notice of intention to hold the claim, as required by 43 CFR 3833.4. The decision recited that the claim was located December 19, 1962, and that a copy of the notice of location was filed with BLM January 9, 1979, but that no affidavit of labor performed or notice of intention to hold the claim was received. The failure to file one of these instruments within the time allowed is deemed conclusively to constitute abandonment of the claim and it is void.

Appellant states that he has held the claim for almost 20 years and has recorded his proof of labor performed each year in the records of Coconino County, Arizona. He had no intention to permit his claim to lapse, and suggests that he was not timely informed by BLM of the fact that his proof of labor was not received.

However, the record shows that appellant had filed a notice of location with BLM on November 28, 1978, and that BLM had sent a letter to appellant on December 5, 1978, advising him of the serial number assigned to his mining claim, calling upon him to submit payment of \$5 service charge for the recordation of the notice of location of his claim, and providing him with a chart which showed the time requirements for submitting affidavits of assessment work as required by FLPMA.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode claim located prior to October 21, 1976, to file in the proper office of BLM a copy of the official record of the notice of location, including a description sufficient to locate the claimed lands on the ground. Additionally, the owner of an unpatented claim located prior to October 21, 1976, must file with the office where the location notice is recorded on or before October 22, 1979, and prior to December 31 of each year thereafter, a

notice of intention to hold the claim, an affidavit of assessment work performed on the claim, or a detailed report relating thereto as provided by 30 U.S.C. § 28-1 (1976). The same instruments must be filed in the proper office of BLM. The section states that failure to file the required instruments timely shall be deemed conclusively to constitute an abandonment of the claim.

As noted above, appellant did file a copy of his location notice with BLM during the time allotted, but he did not file an affidavit of assessment work on or before October 22, 1979. Whether appellant was aware of the requirement for filing a statement concerning the assessment work performed with BLM or not is beside the point. It is an established rule of law that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); John Murphy, 58 IBLA 75 (1981).

[2] Appellant states that he had no intention of allowing his claim to lapse, and that he had, in fact, performed the required assessment work each and every year since he acquired the claim. This argument has been considered by the Board in earlier cases and dismissed. As we stated in Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981):

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

Lynn Keith, *supra* at 197, 88 I.D. at 372.

This result is inevitable because the sole and fundamental purpose of section 314 of FLPMA is to provide for recordation of certain named instruments. Compliance with this statute requires, by its nature, that the instruments be properly and timely delivered to the proper offices, and if this is not accomplished, a claimant's good-faith subjective intent to comply is no cure.

Appellant asserts, without proof, that he had recorded the proof of labor for 1979 in Coconino County, Arizona, on October 10, 1979, and immediately thereafter had mailed a copy of the recorded instrument to BLM. BLM states it has no record of receiving such an instrument. This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filing. Whelan's Mining & Exploration, Inc., 58 IBLA 127 (1981); Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, 46 IBLA 74 (1980).

Appellant may wish to consult with BLM about the possibility of relocating his claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

